

4. Negotiable Instruments Act, 1881

1. Applicability, enactment, extent

- Enactment: The Negotiable Instruments Act, 1881 came into force on 1st March 1881. Prior to its enactment, the provision of the English Negotiable Instrument Act was applicable in India, and the present Act is also based on the English Act with certain modifications.
- Applicability: It applies to whole of India including Jammu & Kashmir (which is recently included in the India). The law in India relating to negotiable instruments are comprised in this act.
 - ▲ The act contains total 147 sections in the act.
- Recent amendments: [Section 143A] The Amendment incorporates "the Power to provide for interim compensation to the complainant." (We will discuss this section in detail in the unit).
 - The act equally applies to all persons in India including the nonresidents.

The Act operates subject to the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934. Section 31 of the Reserve Bank of India Act provides that no person in India other than the bank or as expressly authorised by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand. This Section further provides that no one except the RBI or the Central Government can make or issue a promissory note expressed to be payable or demand or after a certain time. Section 32 of the Reserve Bank of India Act makes issue of such bills or notes punishable with fine which may extend to the amount of the instrument.

The effect or the consequences of these provisions are:

- 1. A promissory note cannot be made payable to the bearer, no matter whether it is payable on demand or after a certain time.
- 2. A bill of exchange cannot be made payable to the bearer on demand though it can be made payable to the bearer after a certain time.
- 3. But a cheque {though a bill of exchange} payable to bearer or demand can be drawn on a person's account with a banker.

2. Meaning and definitions

Meaning : In common parlance a negotiable instrument can be understood as a piece of paper which entitles to a sum of money and which is transferable from one person to another merely by delivery or by Indorsement and delivery.

According to **Justice Willis**, a negotiable instrument is "an instrument, the property in which is acquired by anyone who takes it *bona fide*, and for value, notwithstanding any defect of title in the person from whom he took it. . .."

The Black's Law Dictionary:

"Negotiable instrument is a written instrument that is signed by the maker or drawer, includes an unconditional promise or order to pay a specific sum of money, it is payable on demand or at a definite time, and is payable to order or to bearer."



In the words of **Thomas**, "An instrument is negotiable when it is, by a legally recognised custom of trade or by law, transferable by delivery or by indorsement and delivery, without notice to the party liable in such a way that (a) the holder of it for the time being may sue upon it in his own name, and (b) the property in it passes to a *bone fide* transferee for value free from any defect in the title of the person from whom he obtained it."

According to Section 13 (a) of the Act, "Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word "order" or "bearer" appear on the instrument or not."

The following definition may also help to get the insights of the nature of a negotiable instrument :

"An instrument, the property in which is acquired by anyone who takes it bona fide, and for value, notwithstanding any defect of title in the person from whom he took it, from which it follows that an instrument cannot be negotiable unless it is such and in such a state that the true owner could transfer the contract or engagement contained therein by simple delivery of instrument'.

- 1. Free Transferability: It is a general custom that if we are transferring any property to somebody, we need to prepare deed and other formalities should be fulfilled. There is no such requirement with the transfer of negotiable instruments. Transfer can be done in two forms: Bearer and by order.
- **2. Absolute Title :** The transferee of a negotiable instrument holds an absolute and good title to the instrument provided following conditions are satisfied:
 - (i) The transferee holds it in good faith and believing no defect in the title of the transferor.
 - **For example :** Mr X steals a cheque and transfers it to Mr. Y. Mr. Y holds the cheque for consideration and in good faith without knowing that it was stolen cheque. Mr X has the absolute and good title of the instrument.
 - (ii) The transferee holds it for value or consideration.
- **3. Presumptions**: There are certain presumptions applied on the negotiable instruments viz., the negotiable instruments are prepared for the consideration. It is not compulsory to pen down the words 'for value received' or like terms. It is because the payment of consideration is presumed.
- **4. Prompt payment :** A holder of negotiable instrument can expect prompt payment because dishonour can spoil credit of all the parties involved.
- **Written instrument :** A negotiable instrument is a written document. Writing may be in ink or in pencil but writing in ink is better and safer.
- **6. Signature :** A negotiable instument is complete and effective only when it is duly signed. If a party is unable to write his name, he may sign by a mark.
- 7. **Order or bearer**: A negotiable instrument may be payable either to order or to bearer. A negotiable instrument is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person.
- **8. Unconditional :** A negotiable instrument is always unconditional. A promissory note, the maker of it makes an unconditional promise to pay a sum of money.



Presumptions as To Negotiable Instrument

Sections 118 and 119 of the Negotiable Instrument Act lay down certain presumptions which the court presumes regarding negotiable instruments. In other words, these presumptions need not be proved as they are presumed to exist in every negotiable instrument. Until the conflicting is proved the following presumptions shall be made in case of all negotiable instruments:

- 1. **Consideration**: It shall be presumed that every negotiable instrument was made drawn, accepted, or endorsed for consideration. It is presumed that; consideration is present in every negotiable instrument until the contrary is presumed. The presumption of consideration, however, may be rebutted by proof that the instrument had been obtained from, its lawful owner by means of fraud or undue influence.
- 2. **Date**: Where a negotiable instrument is dated, the presumption is that it has been made or drawn on such date, unless the contrary is proved.
- **Time of Acceptance :** Unless the contrary is proved, every accepted bill of exchange 3. is presumed to have been accepted within a reasonable time after its issue and before its maturity. This presumption only applies when the acceptance is not dated; if the acceptance bears a date, it will prima facie be taken as evidence of the date on which it was made.
- 4. Time of Transfer: Unless the contrary is presumed it shall be presumed that every transfer of a negotiable instrument was made before its maturity.
- **Order of Endorsement :** Until the contrary is proved it shall be presumed that the 5. endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.
- 6. **Stamp**: Unless the contrary is proved, it shall be presumed that a lost promissory note, bill of exchange or cheque was duly stamped.
- Holder in Due Course: Until the contrary is proved, it shall be presumed that 7. the holder of a negotiable instrument is the holder in due course. Every holder of a negotiable instrument is presumed to have paid consideration for it and to have taken it in good faith. But if the instrument was obtained from its lawful owner by means of an offence or fraud, the holder has to prove that he is a holder in due course.
- 8. **Proof of protest:** Section 119 lays down that in a suit upon an instrument which has been dishonoured, the court shall on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Classification of Negotiable Instruments

Negotiable instruments may be classified as under.

1. Bearer Instruments

A bearer instrument means payable to any person whosoever bears it. A promissory note, bill of exchange or cheque is payable to the bearer when:

- (a) it is expressed to be so payable, or
- (b) the only or last indorsement on the instrument is an indorsement in blank, A person who is a holder of a bearer instrument can obtain the payment of the instrument.



The Act operates subject to the provisions of Sec. 31 and 32 of the Reserve Bank of India Act, 1934. Section 31 of the Reserve Bank of India Act states in this regard as given below:

"No person in India other than the Bank or as expressly authorised by this Act, the Central Government shall draw, accept, make, or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand.

This Section further provides that no one except the RBI or the Central Government can make or issue a promissory note expressed to be payable on demand or after a certain time. Section 32 of the Reserve Bank of India Act declares issue of such bills or notes, a punishable act which attracts a fine which may extend to the amount of the instrument. The effect or the consequences of these provisions are summarised below.

- No person other than the Reserve Bank of India or the Central Government can issue a promissory note payable to the bearer, no matter whether it is payable on demand or after a certain time.
- A bill of exchange cannot be made payable to the bearer on demand though it can (ii) be made payable to the bearer after a certain time.
- (iii) But a cheque (though a bill of exchange) payable to the bearer or demand can be drawn on a person's account with a banker.

2. Order Instruments

A promissory note, bill of exchange or cheque is payable to order if:

- (i) It is expressed to be so payable, or
- (ii) It is expressed to be payable to a particular person and does not contain any words prohibiting transfer or indicating an intention that it shall not be transferable.

3. Inland Instruments

Section II of the Act provides that a promissory note, bill of exchange or cheque drawn or made in India, and made payable, or drawn upon any person, resident in India shall be deemed to be an inland instrument. Since a promissory note is not drawn on any person, an inland promissory note is the one which is made payable in India. Subject to this exception, an inland instrument is one which is either:

- (i) Drawn and made payable in India, or
- Drawn in India upon some persons resident of India, even though it is made (ii) payable in a foreign country.

4. Foreign Instruments

An instrument which is not an inland instrument is deemed to be a foreign instrument. Following are the essentials of a foreign instrument:

- (a) It must be drawn outside India and made payable outside or inside India; or
- (b) It must be drawn in India and made payable outside India and drawn on a person resident outside India.

5. Demand Instruments

Section 19 of the Act provides that a promissory note or a bill of exchange in which no time "for payment is specified is an instrument payable on demand.



6. Time Instrument

Time instruments are those instruments which are payable at some time in the future. Thus, a promissory note or a bill of exchange payable after a fixed period, or after sight, or on specified day, or on the happening of an event which is certain to happen, is known as a time instrument. The expression 'after sight' in a promissory note implies that the payment cannot be demanded on it unless it has been shown to the maker. In the case of bill of exchange, the expression 'after sight' infers after acceptance, or after noting for non-acceptance or after protest for non-acceptance

7. Ambiguous Instruments

Section 17 of the Act states that an instrument, which in form is such that it may either, be treated by the holder as a bill or as a note, is an ambiguous instrument. It further provides that in such cases where in a bill, the drawer and the drawee are the same person or where the drawee is a fictitious person or a person who is not competent to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note and every such instrument will be treated as ambiguous instrument.

Examples

- (a) Bills drawn to or to the order of the drawee or by an agent on his principal or by one branch of a bank on another or by the direction of a company or their cashier are also ambiguous instruments.
- (b) A promissory note addressed to a third person may be treated as a bill by such person by accepting it, while a bill not addressed to anyone may be treated as a
- If the drawer and payee are the same, for example, where X draws a bill payable (c) to X, it is not an ambiguous instrument and cannot be treated as a promissory note.

8. Inchoate or Incomplete Instruments

According to Sec. 20 of the Act, when one person signs and delivers to another person a paper stamped in accordance with the law relating to negotiable instruments, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby prima facie authorizes the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount, covered by the stamp. Such an instrument is called an inchoate instrument. The authority to fill up a blank or incomplete instrument may be exercised by any 'holder' and not only the first holder to whom the instrument was delivered.

9. Accommodation Bill (Sec. 49)

An accommodation bill is a bill in which a person lends or gives his name to oblige a friend or some person whom he knows or otherwise. In simple words, a bill which is drawn, accepted or indorsed without consideration is called an accommodation bill. The party lending his name to oblige the other party is called the accommodating or accommodation party, and the party so obliged is known as the party accommodated. In form and all other respects an accommodation bill is quite similar to an ordinary bill of exchange. There is nothing on the face of the accommodation bill to distinguish it from an ordinary trade bill. The point to be noted here is that there is no consideration present between the accommodation party and party



accommodated. Thus, the accommodation party is not liable on the instrument to the party accommodated as the bill was merely to help the accommodated party. However, the accommodation party is liable to a holder for value, who takes the accommodation bill for value, though such holder may not be a holder in due course.

Following are the rules laid down by the act regarding accommodation bills :

- (a) According to the provisions of Sec. 43, if the party accommodated continues to hold the bill till maturity, the accommodating party shall not be liable to him for payment "of the bill since the contract between them is not based on any consideration.
- (b) The accommodating party is free from any liability to any subsequent holder for value who knows the exact position that the bill is an accommodation bill and that the full consideration has not been received by the acceptor. In such case the accommodating party can, in turn, claim compensation from the accommodated party for the amount it has been asked to pay the holder for value.
- (c) Section 59 states that an accommodation bill may be negotiated after maturity. The holder or such a bill after maturity is in the same position as a holder before maturity, provided he takes the bill in good faith and for value.

Example

P was in need of money for three months. He induced his friend Q to accept a bill of exchange drawn on him for {10,000 for three months. The bill was drawn and accepted. The bill was an 'accommodation bill'. P might get the bill discounted from his bankers immediately, paying a small sum as discount. Thus, he could use the funds for three months and then just before maturity he might remit the money to Q, who would meet the bill on maturity. In this example P is the 'accommodated party 'while Q is the 'accommodating party'.

10. Bills in Sets

Foreign bills are usually drawn in sets to avoid the danger of loss. Bills of exchange drawn in part are known as bills in sets. Each part is numbered, and it contains a provision that it shall continue to be payable only so long as the others remain unpaid. Thus, all the parts together make a set; but the whole set constitutes only one bill and is extinguished when one of the parts of a separate bill is extinguished. All these parts of the bill are signed by the drawer and all are to be delivered to the payee. The stamp is affixed only on one part and one part is required to be accepted. But if the drawer mistakenly accepts all the parts of the same bill, he will be liable on each part accepted as if it were a separate bill. In case where a bill of exchange has been lost before it was overdue, the person who was the holder to it may apply to the drawer, to give him another bill of the same tenor. It is only the holder who can ask for a duplicate bill. Rules provided under Sec. 132 and 133 of the act for bills in sets are summarized below:

(a) Section 132 of the act states that a bill of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue to be payable only so long as the others remain unpaid. All parts make one bill and the entire bill is extinguished that means when payment is made on one part, the other parts will become inoperative.



- The Section further provides that the drawer should sign and deliver all the parts (b) but the acceptance is to be conveyed only on one of the parts. If a person accepts or endorses different parts of the bill in favour of different persons, then he and the subsequent endorsers' of each part are liable on such part as if those were separate bills.
- (c) According to the provisions of sec. 133, as between holders in due course of the different parts of the same bill, he who first acquired title to anyone part is entitled to the other parts and is also entitled to claim the money represented by the bill.

11. Fictitious Bill

Section 42 of the Act provides that when the name of the drawer or payee or both are fictitious, the bill is called a fictitious bill. The word 'fictitious' here means:

- (a) a non-existing person, and
- (b) a pretended person, i.e., a person other than the actual person intended by the parties. If a bill is drawn in the name of a fictitious person and payable to the drawer's order, the acceptor is liable to pay to the order of the person who signed it as drawer. Therefore, the indorsee is entitled to recover the amount as against the acceptor provided, he is in a position to show that the signature of the supposed drawer of the bill and the first indorsement on it are in the handwriting of the same person. It is to be noted here that in case of fictitious instruments, only a holder in due course can recover the money as against the acceptor.

12. The Documentary Bill and Clean Bill

A bill which has documents attached is called documentary bill. Thus, documentary bills are accompanied by documents that confirm that a trade has taken place between the buyer and the seller of goods. Such documents include the invoices and other documents of title such as railway receipts, lorry receipts and bills of lading issued by custom officials. Documentary bills can be further classified as:

- (a) Documents against acceptance (D/A) bills, and
- Documents against payment (DIP) bills.

In case of a clean bill, the documentary evidence accompanying the bill of exchange is deliverable against acceptance by the drawee. Thus, the documentary bill becomes a clean bill after delivery of the documents. Clean bills are not accompanied by any documents that show that a trade has taken place between the buyer and the seller. Because of this, the interest rate charged on such bills is higher than the rate charged on documentary bills.

13. Escrow

When a bill is indorsed or delivered to a person subject to the understanding that it will be paid only if certain conditions are fulfilled, such a bill is called an 'escrow'. Here, there is no liability of the drawer until the conditions agreed are fulfilled. However, the rights of a holder in due course will not be affected by non-fulfillment of the stated condition.

14. Undated Bills and Note

If an instrument is expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument is payable



accordingly. Thus, the insertion of a wrong date or no date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

15. Joint Instruments:

When a negotiable instrument is signed by two or more persons, it is said to be a joint instrument. In such cases their liability on it shall be joint as well as several.

3. Kinds of Negotiable instruments

Section 13 of the Negotiable Instruments Act states that a negotiable instrument is a promissory note, bill of exchange or a cheque payable either to order or to bearer. Negotiable instruments recognised by statute are: (i) Promissory notes (ii) Bills of exchange (iii) Cheques. Negotiable instruments recognised by usage or custom are: (i) Hundis (ii) Share warrants (iii) Dividend warrants (iv) Bankers draft (v) Circular notes (vi) Bearer debentures (vii) Debentures of Bombay Port Trust (viii) Railway receipts (ix) Delivery orders. Through the process of development and transformations in the field of banking and commerce, new types of negotiable instruments have been emerged with the time. Generally, the court of law, follow the English law for majority of cases under negotiable instruments.

Following is the brief description of kinds of negotiable instruments:

1. Promissory note: Section 4 of the Act defines, "A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments."

Requisites/Elements for promissory notes:

A promissory note should contain following essentials:

- Written: A promissory note must be written, only verbal promise to pay the **(1)** amount is not a promise note. It can be written by pencil/pen/ printing etc. The manner of writing is not important, but it should be in the form which cannot be altered easily.
- **(2) Certainty of money :** In a promissory note, the sum of money payable must also be certain or capable of being made certain. The amount payable under a promissory note must not be susceptible of contingent additions or deductions.
- **Unconditional**: The promise should be absolute. If any negotiable instrument **(3)** attached to any condition will terminate the negotiability feature of the instrument.
- **(4) Duly signed**: The promissory note must be duly signed by the person who is making the promise to pay. The signature can be in any format, it can be in ink or pencil, initials, or a thumb impression.
 - The agent of maker can also sign the promissory note, but he must indicate the name of the person on whose behalf he is signing the document, otherwise he would be held personally liable for the payment. It is important to mention the identity of the promisor.
- **(5) Certainty of maker:** The promissory note must indicate the person who is giving his consent to make the payment. The person who is signing the promissory note is liable as the maker of the note. In case, there are 2 or more persons signing the note, can bound themselves jointly but the liability cannot be alternative.



- (6) Certainty of payee: The promissory note must indicate the person to whom the promise is made. Indication may be by name or by designation. In case, if any mistake occurs in the name or designation of the payee then also it will be valid provided certainty of payee can be proved by evidence.
 - If the name of the dead person is mentioned in the note as payee (promisor is ignorant of death), then it is valid and legal representatives of the dead person can take the amount.
- (7) **Payment of money:** The promise must be for the payment of money only.
- (8) Certainty of amount : Amount payable must be certain.
- (9) No proforma: There is no prescribed proforma or promissory note. It may be in any form and language. Even no particular form of words is necessary. It may be written on any piece of paper or in any note book or register.
- (10) Express promise to pay: It must contain an express promise to pay. An instrument containing a mere implied promise to pay cannot be said to be a promissory note. Moreover, a mere acknowledgement of debt is not sufficient.
- (11) Unconditional: A promissory note must not only contain a promise to pay. The promise to pay must also be unconditional. Any instrument which is only payable on the happening of a contingent event is conditional and cannot constitute a promissory note.
- (12) Stamped: All promissory notes are chargeable with stamp duty under the Indian Stamp Act. Therefore, all promissory notes must be property stamped in order to make them legally enforceable.
- (13) Delivery: The making of a promissory note completes when it is delivered to the payee. [Sec. 46] If the maker does not deliver the duly signed note to the payee or his agent, it does not create any obligation of the maker.
- (14) Payable on demand or after a definite period of time: A promissory note may be made payable on demand or payable after a definite period of time. A promissory note payable on demand, is to be paid immediately on demand.
- (15) Exceptions: A bank note or currency note is not a promissory note because it is money itself.
- (16) Other requirements: Date or the specific time period, place and consideration are found as the part of the promissory note. The mention of date is not mandatory, or its absence doesn't invalidate the promissory note. As the date of execution is certain and proved.

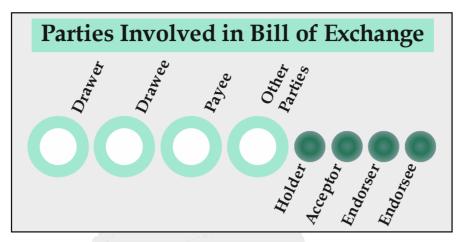
Parties to a Promissory Note

- **1. Maker**: He is the person who promises to pay the amount stated in the note. He is the debtor.
- **2. Payee :** He is the person to whom the amount is payable i.e. the creditor.
- 3. **Holder:** He is the payee or the person to whom the note might have been indorsed.
- **4. The Endorser and indorse** (the same as in the case of a bill).
- **2. Bill of Exchange :** Section 5 of the Act defines, "A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument".



With the above definition, it can be concluded that a bill of exchange, therefore, is a written acknowledgement of the debt, written by the creditor and accepted by the debtor.

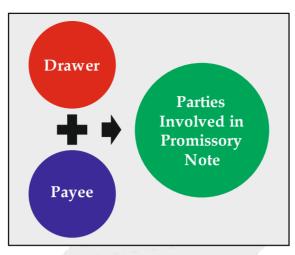
Parties to the bill of exchange



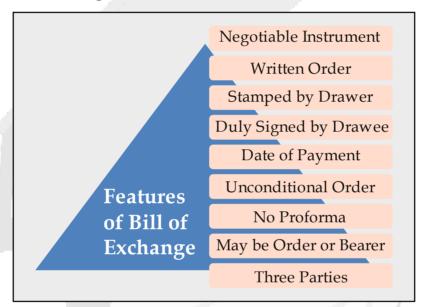
- **1. Drawer**: The maker of a bill of exchange is called the 'drawer'.
- **2. Drawee**: The person directed to pay the money by the drawer is called the 'drawee',
- **3. Acceptor :** After a drawee of a bill has signed his assent upon the bill, or if there are more parts than one, upon one of such pares and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the 'acceptor'.
- **4. Payee :** The person named in the instrument, to whom or to whose order the money is directed to be paid by the instrument is called the 'payee'. He is the real beneficiary under the instrument. Where he signs his name, and makes the instrument payable to some other person, that other person does not become the payee.
- **5. Endorser**: When the holder transfers or endorses the instrument to anyone else, the holder becomes the 'endorser'.
- **6. Indorse:** The person to whom the bill is indorsed is called an 'indorsee'.
- 7. **Holder**: A person who is legally entitled to the possession of the negotiable instrument in his own name and to receive the amount thereof, is called a 'holder'. He is either the original payee, or the indorse. In case the bill is payable to the bearer, the person in possession of the negotiable instrument is called the 'holder'.
- 8. Drawee in Case of Need: When in the bill or in any endorsement, the name of any person is given, in addition to the drawee, to be resorted to in case of need, such a person is called 'drawee in case of need'.
- 9. Acceptor for Honour: In case the original drawee refuses to accept the bill or to furnish better security when demanded by the notary, any person who is not liable on the bill, may accept it with the consent of the holder, for the honour of any party liable on the bill. Such an acceptor is called 'acceptor for honour'.

Parties to the bill of exchange: Drawer, acceptor or drawee and payee. Drawer himself may be the payee.





Requisites to a bill of exchange:



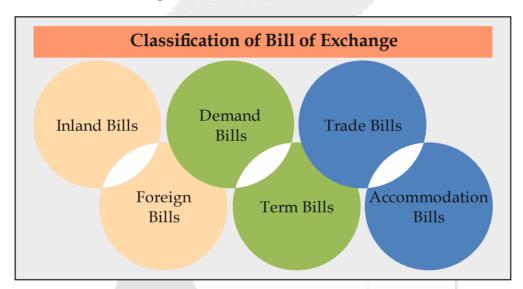
Essentials of a Bill of Exchange

- **1.** It must be in writing: A bill of exchange must be in writing. It cannot be oral. It may be in ink or in pencil.
- **2. No proforma**: No particular form has been prescribed for a bill of exchange. It may, therefore, be drawn in any form but it must substantially comply with the requirements of Section 5.
- 3. It must contain an order to pay: A bill of exchange must contain an express order to pay a sum specified in it.
- 4. It must be unconditional: A bill of exchange must be unconditional and payable at all events.
- **5. It must contain an order to pay money only :** A bill of exchange must contain an order to pay money and money only.
- 6. The sum payable must be certain: To constitute a valid bill of exchange, the sum directed to be payable must be certain. The sum payable must not be susceptible of contingent additions or deductions.
- 7. Three parties: There must be three parties to a bill of exchange. They are: (i) Drawer, (ii) Drawee, ad (iii) Payee.



- **8.** It must be signed by the maker: A bill of exchange is effective only if it is signed by the maker.
- **9.** The drawee must be certain: The drawee must be named or indicated in the bill itself with reasonable certainly. It is essential in order that the payee may know the person to whom he should present the instrument for acceptance and payment.
- **10.** The payee must be certain: A bill of exchange must indicate with certainty the person to whom payment is to be made.
- 11. May be order of bearer: A bill of exchange may be payable to order or bearer. But no bill payable to bearer on demand can be drawn by an person other than the RBI or the Central Government.

Classification of Bill of Exchange:



(1) Inland and foreign bills: A bill is inland bill, if: (a) the bill is drawn in India on the person residing in India, payable outside or in India, or (b) the bill is drawn in India on the person residing outside India but payable in India.

A bill is Foreign bill, if:

- (a) A bill drawn outside India and made payable in India.
- (b) A bill drawn outside India on any person residing outside India.
- (c) A bill drawn in India on a person residing outside India and made payable outside India.
- (d) A bill drawn outside India on a person residing in India.
- (e) A bill drawn outside India and made payable outside India.

Section 132 and 133: Bills in sets

- Foreign bills drawn in sets termed 'via'
- On payment of any set, other sets become inoperative.
- Different sets are prepared and send on same day by separate conveyance mode to avoid the risks of loss and miscarriage in transit.
- **(2) Time and Demand Bill :** A bill payable after a fixed time is termed as a time bill. In other words, bill payable 'after date' is a "Time Bill"

A bill payable at sight or on demand is termed as a Demand Bill.



(3) Trade and Accommodation Bill: A bill drawn and accepted for a genuine trade transaction is termed as a "Trade Bill".

A bill drawn and accepted not for a genuine trade transaction but only to provide financial help to some party is termed as an "Accommodation Bill".

3. Cheques

Section 6 of the Act defines "A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand".

A cheque is known as a bill of exchange with the following qualifications, namely,

- (i) it is always drawn on a specified banker, and
- (ii) it is always payable on demand.

Therefore, all cheques are bill of exchange, but all bills are not cheques. A cheque necessarily fulfil all the requirements of a bill of exchange; that is, it must be signed by the drawer, and must contain an unconditional order on a specified banker to pay a certain sum of money to or to the order of a certain person or to the bearer of the cheque. It does not require acceptance

Parties to a Cheque

- **1. Drawer :** He is the person who draws the cheque, i.e., the depositor of money in the bank.
- **2. Drawee**: It is the drawer's banker on whom the cheque has been drawn.
- 3. Payee: He is the person who is entitled to receive the payment of the cheque.
- 4. The holder, indorser, and indorsee (the same as in the case of a bill or note).

The act also mentions below terms:

- (i) Cheque in the Electronic form: A cheque in the electronic form means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature)
- (ii) Truncated Cheque: A truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.
- (iii) Clearing House: The expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.

Essential Elements of a Cheque

- 1. It must be in writing and can never be verbal.
- 2. It may be written on paper or it may be in electronic form.
- 3. It must be signed by the drawer in ink. Electronic cheque may bear digital signatures.
- 4. It must be drawn on a bank.
- 5. It must contain an **unconditional order** to pay.
- 6. It must contain an order to pay a certain sum of money.
- 7. It must be **payable in money** and only money.



- 8. It must be always payable on demand.
- 9. May be payable either to a certain person or order of that person or to the bearer of it.
- 10. It must have certain parties
- 11. Cheques may be of three types: (i) Bearer cheque, which is payable to the bearer, (ii) Order cheque, which is payable to the person specified in the cheque or order of that person. It can be made payable only to that person specified in the cheque. (iii) Crossed cheque, which is made payable only through a bank.

Negotiation

'Negotiation' is the procedure which is used by third party may be defined as the process by which a third party is constituted the holder of the instrument to entitle him to the possession of the same and to receive the amount due thereon in his own name. According to section 14 of the Act, 'when a promissory note, bill of exchange or cheque is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be **negotiated.'** The main purpose and essence of negotiation is to make the transfer of a promissory note, a bill of exchange or a cheque to the holder there of.

Conditions to be fulfilled for negotiation:

- 1. Transfer of the instrument to another person; and
- 2. The transfer essentially be made in such a way as to involve the transferee and the holder of the instrument.
- 3. Mere handing over a negotiable instrument to a servant for safe custody is not negotiation; there must be a transfer with an intention to pass title.

Characteristics of Negotiation

- 1. There must be two parties for negotiation of an instrument. They are known as transferor or indorser and transferee or indorsee.
- 2. In the process of negotiation, an instrument is transferred/indorsed form one person to another.
- 3. Transferor must be the holder of the instrument. It may be noted that a holder means a person who is entitled in his own name to the possession of an instrument.
- In the process of negotiation, the instrument must be delivered and transferred 4. to another person in order to constitute him the holder of the instrument.
- 5. The delivery of the instrument may be actual or constructive.

Modes of Negotiation

Negotiation may be affected in the following two ways:

- Negotiation by Delivery (Section 47): Where a promissory note or a bill of 1. exchange or a cheque is payable to a bearer, it may be negotiated by delivery thereof. Example: A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep it for B. The instrument has been negotiated.
- 2. Negotiation by Endorsement and Delivery (Section 48): A promissory note, a cheque, or a bill of exchange payable to order can be negotiated only be endorsement and delivery. Unless the holder signs his endorsement on the instrument and delivers it, the transferee does not become a holder. If there are more payees than one, all must endorse it.



Assignment

Bill of exchange, promissory notes and cheques represent debts and are assignable with the indorsement. Transfer in the form of assignment takes place when the holder of a negotiable instrument sells his right to another person without endorsing it. The assignee is authorized to get custody and can claim the amount due on the instrument from the parties thereto.

From the above two method of transfer of negotiable instruments discussed, transfer by negotiation is recognised by the Negotiable Instrument Act.

Importance of Delivery in Negotiation

Delivery is a deliberate transfer of ownership from one person to another. Delivery is important to complete any contract on a negotiable instrument whether it be contract of making endorsement or acceptance. The property in the instrument does not pass unless the delivery is fully completed. Section 46 of the Act provides that a negotiable instrument is not made or accepted or endorsed unless it is delivered to a proper person. For instance, if a person signs a promissory note and keeps it with himself, he cannot be said to have made a promissory note; only when it is delivered to the payee that the promissory note is made.

Delivery may be absolute or constructive. Delivery is absolute when it is accompanied by actual change of possession of the instrument. Constructive delivery is affected without any change of actual possession.

Distinction Between Negotiation and Assignment

Basis of Distinction	Negotiation	Assignment		
1	2	3		
1. Procedure of transfer	A bearer instrument may be			
	negotiated merely by delivery	written document signed by		
	and an order instrument can be	the transferor. Written		
	negotiated by indorsement and	document is required in		
	delivery.	respect of bearer and order		
		in-struments as well.		
2. Consideration	In case of negotiation, there is a	In case of assignment, there		
	presumption that the	is no such presumption. The		
	negotiation was made for	transferee has to prove		
	consideration.	consideration for		
		assignment.		
3. Notice	In the case of negotiation, no	In the case of assignment,		
	notice is required to be given to	notice of assignment must		
	the party liable on the	be given to the party liable		
	instrument. The party shall be	on the instrument. Without		
	liable to pay even without such	such notice the assignment		
	notice.	is incomplete and		
		ineffective.		



4. Consent	In the case of negotiation, there	In the case of assignment
	is no need of consent of the	consent of the party liable on
	party liable on the instrument.	the instrument is a must in
		order to hold him liable by
		the assignment. The consent
		to the assignment may be
		express or implied.
5. Title	In the case of negotiation, the	An assignee gets the
	transferee (i.e. a holder in due	instrument subject to the
	course) gets a better title to the	defects in the title of the
	instruments than that of the	transferor.
	transferor.	
6. Scope	Only negotiable instruments can	Assignment may be made of
	be negotiated.	any right including the
		rights in negotiable
		instruments.
7. Governing law	Negotiations are governed by	Assignments are governed
	the Negotiable Instruments Act.	by the Transfer of Property
		Act.

Endorsement

The word 'endorsement' in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein. Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an 'endorser', and the person to whom negotiable instrument is transferred by endorsement is called the 'endorsee'.

Who may endorse?

The payee of an instrument is the rightful person to make the first endorsement. Thereafter the instrument may be endorsed by any person who has become the holder of the instrument. The maker or the drawer cannot endorse the instrument but if any of them has become the holder thereof he may endorse the instrument. (Section 51).

Classes of Endorsement

An endorsement may be:

- Blank or general. 1.
- 2. Special or full.
- 3. Partial.
- 4. Restrictive
- 5. Conditional.
- (a) Blank or general endorsement (Sections 16 and 54): It is an endorsement when the endorser merely signs on the instrument without mentioning the name of the person in whose favour the endorsement is made. Endorsement in blank specifies no endorsee. It simply consists of the signature of the endorser on the endorsement. A negotiable instrument even though payable to order becomes a bearer instrument if endorsed in blank. Then it is transferable by mere delivery. An endorsement in blank may be followed by an endorsement in full.



(b) Special or full endorsement (Section 16): When the endorsement contains not only the signature of the endorser but also the name of the person in whose favour the endorsement is made, then it is an endorsement in full. Thus, when endorsement is made by writing the words "Pay to A or A's order," followed by the signature of the endorser, it is an endorsement in full. In such an endorsement, it is only the endorsee who can transfer the instrument.

Conversion of Endorsement in Blank into Endorsement in Full: When a person receives a negotiable instrument in blank, he may without signing his own name, convert the blank endorsement into an endorsement in full by writing above the endorser's signature a direction to pay to or to the order of himself or some other person. In such a case the person is not liable as the endorser on the bill. In other words, the person transferring such an instrument does not incur all the liabilities of an endorser. (Section 49).

Where a bill is endorsed in blank or is payable to bearer and is afterwards endorsed by another in full, the bill remains transferable by delivery with regard to all parties prior to such endorser in full. But such 27 endorsers in full cannot be sued by anyone except the person in whose favour the endorsement in full is made. (Section 55).

- (c) Partial endorsement (Section 56): A partial endorsement is one which purports to transfer to the endorsee a part only of the amount payable on the instrument. Such an endorsement does not operate as a negotiation of the instrument.
- (d) Restrictive endorsement (Section 50): The endorsement of an instrument may contain terms making it restrictive. Restrictive endorsement is one which either by express words restricts or prohibits the further negotiation of a bill or which expresses that it is not a complete and unconditional transfer of the instrument but is a mere authority to the endorsee to deal with bill as directed by such endorsement.

10. Effects of indorsement and its cancellation

Effects of Endorsement

The legal effect of negotiation by endorsement and delivery is :

- (i) to transfer property in the instrument from the endorser to the endorsee.
- (ii) to vest in the latter the right of further negotiation, and
- (iii) a right to sue on the instrument in his own name against all the other parties (Section 50).

Cancellation of Endorsement

When the holder of a negotiable instrument, without the consent of the endorser destroys or impairs the endorser's remedy against prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity (Section 40).

Negotiation back 'Negotiation back' is a process under which an endorsee comes again into possession of the instrument in his own right. Where a bill is re-endorsed to a previous endorser, he has no remedy against the intermediate parties to whom he was previously liable though he may further negotiate the bill.

Instruments without Consideration

Section 58 of the Act provides that no person in possession of an instrument with a defect of title can claim the amount of the instrument unless he is a holder in due course. The moment an instrument comes into the hands of a holder in due course, not only does he get a title which is free from all defects but having passed through his hands the instrument is cleaned of all defects.



Holder in Due Course

Section 9 of the Act defines 'holder in due course' as any person who (i) for valuable consideration, (ii) becomes the possessor of a negotiable instrument payable to bearer or the indorse or payee thereof, (iii) before the amount mentioned in the document becomes payable, and (iv) without having sufficient cause to believe that any defect existed in the title of the person from whom he derives his title. (English law does not regard payee as a holder in due course).

Discharge of a negotiable instrument

Discharging of a negotiable instrument means that all the rights of action under it are completely extinguished and it ceases to be negotiated anymore.

The term 'discharge' in relation to negotiable instruments is used in two senses: (1) discharge of one or more parties, and (2) discharge of an instrument

1. Discharge of an instrument

An instrument is discharged when all the rights under it are extinguished so that the instrument ceases to be negotiable. For example, when the party primarily liable on the instrument, i.e. the maker or the acceptor is discharged, the instrument is also discharged. After an instrument is discharged all the parties are also discharged from their liabilities even holder in due course cannot claim the amount of the instrument from any party to the instrument.

2. Discharge of one or more parties

When one or more parties are discharged, the instrument continues to be liable and the undercharged parties remain liable on the instrument. For example, when the name of the indorser is cancelled, the drawer and acceptor continue to be liable.

It may be pointed out that the term 'discharge of instrument' is wider than the term 'discharge of party(ies).' When an instrument is discharged, all the parties to the instrument are also discharged automatically. However, discharge of one or more parties does not necessarily discharge the instrument.

Discharging of an instrument

An instrument is discharged in the following ways:

1. By payment in due course [Sec. 10 and 82(c)]: Perhaps this is the most natural and usual mode of discharge of an instrument. All parties to an instrument are discharged by payment made in due course.

Important Guidelines Regarding Payment

- The payment should be made by the party primarily liable, i.e. the maker of a note or the acceptor of a bill and the drawee of a cheque. If the payment is made by any indorser, the instrument will not be discharged; only that indorser and subsequent parties will be discharged.
- 2. The payment of the instrument should be made at or after maturity. If the payment is made before maturity, it will not discharge the instrument unless the instrument is cancelled. If it is not cancelled, it is likely to reach again in the hands of a holder in due course who can enforce payment.
- Payment should be made to the holder, otherwise it will not discharge the party 3. liable to pay (Sec. 78). In case the instrument is payable to bearer, the payment may be made to any person in possession of the instrument unless there is a suspicion to show that he is not entitled to payment.



In that case, payment even to a thief or finder will discharge the instrument. In case the instrument is payable to order, the payment should be made to the payee named. This condition is very strict. Even if the payment is made to another person of the same name, it will not discharge the party liable to pay it.

However, in case of a cheque, special protection has been granted by Sec. 85(1): "Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course".

2. Discharge by cancellation [Sec. 82(a)] : Where the holder of an instrument with the intention of discharging the instrument, cancels the name of the party primarily liable (i.e. the maker of a note or the acceptor of a bill), the instrument is discharged. An instrument is also discharged if the holder cancels the instrument itself with an intention of discharging all the parties to the instrument. He may cancel the instrument by scoring it out or tearing it off.

It should be noted that cancellation should be intentional.

An accidental cancellation will not discharge the instrument. To discharge the instrument, the name of the party primarily liable should be cancelled. If the name of a party who is secondarily liable is cancelled, the instrument will not be discharged; only the subsequent parties will be discharged in that case. The instrument should be destroyed physically so that it may not be used again.

- 3. By acceptor of a bill becoming its holder [Sec. 90]: Where the acceptor of a bill of exchange (which has been negotiated) becomes its holder at or after maturity, the bill is discharged. This is based on the principle of 'Negotiation Back' discussed earlier. The party primarily liable becomes the holder of the instrument, it will not be allowed to enforce its claim against other parties because it will lead to circuity of action. Hence the instrument is discharged.
- **4. By release [Sec. 82 (b)]:** Where the holder of the instrument releases the party primarily liable on the instrument or otherwise discharges him, the instrument is also discharged. The reason is very simple. Discharge of principal debtor discharges the surety. In a negotiable instrument, an indorser and subsequent parties are in the position of sureties.

Discharge of One or more Parties to an Instrument

- 1. Discharge by cancellation [Sec. 82(a)]: This point has already been discussed as point No. 2 on the last page while discussing discharge of an instrument.
- **2.** Discharge by release [Sec. 82(b)]: Where the holder of the instrument releases any indorser or otherwise discharges him, then that indorser and subsequent parties are discharged from the liabilities.
- 3. Discharge by payment [Sec. 82(c)]: Where the party primarily liable on the instrument makes the payment, the instruments as well as all the parties to the instrument are discharged. For essential rules regarding payment, please refer to discharge of instrument discussed earlier.
- **4.** Discharge by allowing more than 48 hours to the drawee to accept the bill [Sec. 83]: If the holder allows more than 48 hours to the drawee to consider whether or not he will accept the bill, all previous parties not consenting to such allowance, are discharged from their liability to such holder.



- **5.** Discharge by delay in presenting cheques [Sec. 48]: A cheque must be presented for payment within a reasonable time. When a cheque is not presented for payment within a reasonable time of its issue and the drawer suffers actual damage through the delay, he is to that extent discharged from his liability. However, the holder shall become the creditor of the bank to that extent.
- **6. Discharge by qualified acceptance :** As a rule, acceptance must be absolute or unqualified. A holder is entitled to object to a qualified acceptance. However, if he does not object to such qualified acceptance, all other parties who do not consent to such qualified acceptance are discharged to such holder and those claiming under him, unless, on notice given by the holder, they agree to such acceptance.
- 7. Discharge by material alteration [Sec. 87]: Any material alteration of a negotiable instrument renders the same void as against anyone who is party thereto at the time of making such alteration. However, if the party consents to such alteration or it was made to carry out the common intention of the parties, the alteration does not discharge the party concerned.

Alteration by Indorsee: Any alteration made by the indorsee, discharges his indorser from all liability to him. However, it should be noted that an acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement if the alteration was made before he accepted or indorsed the instrument. The reason is simple. In such a case, he has in a way consented to such alteration.

An alteration is void only if it is made subsequent to acceptance or indorsement.

- **8.** Discharge by payment of instrument on which alteration is not apparent: When an instrument has been materially altered but does not look like that or where cheque has been crossed but does not appear to have been crossed, e.g. crossing clearly erased, the person paying or the banker is discharged from all liabilities thereon.
- 9. Discharge by debtor becoming its holder, i.e. when the acceptor of a bill again becomes its holder [Sec. 90]: We have already made reference to negotiation back which discharges all the parties to the bill. A debtor (acceptor) who again becomes the holder of a bill, discharges all other parties on the same principle.
- **10. Discharge by operation of law :** Liability of party to a negotiable instrument is discharged by operation of law. It may be by:
 - (a) Insolvency. An insolvent is discharged from his liability.
- (b) Merger. When merger takes place, the liability is discharged, i.e., merging of debt under the instrument into the judgement debt.
- (c) Law of limitation. Further, the liability may be discharged by the debt becoming time- barred by the law of limitation.

Material Alteration

An alteration which in any way alters the operational character of the instrument or rights and liabilities of the parties is called material alteration. It is immaterial whether the alteration is advantageous or disadvantageous. Alteration must be intentional. An accidental alteration is not bad. It need not be made by the holder. It is sufficient if it was made when the instrument was in the possession of the holder. The holder must take every care to protect it from such alteration, otherwise he will be liable for the consequence of the alteration.



Material Alterations

The following alterations are regarded as material: 1. the date, 2. the sum payable, 3. the place of payment, 4. the time of payment, 5. the rate of interest, 6. the place where the instrument is drawn, 7. addition of a party's name or place of payment.

Any of the above alterations made will discharge the parties liable on the instrument. Alterations which are not material (Sec. 87)

The following alterations are not regarded as material alterations:

- Alteration made before acceptance or indorsement. An acceptor and indorser are 1. bound by previous alterations (Sec. 88).
- 2. Alteration made to carry out the common intention of the parties.
- 3. Alteration consented to or agreed by the other parties.
- 1. Filling an inchoate but stamped instrument (Sec. 20): A holder has the authority to fill in the blanks in such an instrument. Even where the holder fills an amount larger than intended (but is covered by the stamp) the instrument is not void against a holder in due course.
- 2. Converting blank indorsement into full (Sec. 49): A holder has the authority to convert an indorsement in blank into an indorsement in full.
- 3. Conditional or qualified acceptance (Sec. 86): A holder may take a qualified acceptance.
- 4. Crossing of cheques (Sec. 125): A holder and a banker are empowered to cross the cheques.

Effect of Material Alteration (Sec. 87)

When a material alteration has been made a negotiable instrument, as well as all the parties to the instrument are discharged. If the alteration is made by an indorsee, then his indorser is discharged from all liabilities to him.

It should be noted that even if a material alteration is agreed by all the parties, it becomes a new instrument which requires a new stamp.

Offence under Section 138

The dishonouring of cheques due to insufficient funds is criminalised by the insertion of Section 138. The offence is also person specific and like IPC takes cognizance of offender along with the offence. In some features yet it differs from the ones defined in IPC when compared. It neither counts for mens rea nor treats it par with the other crimes.

The main objective of Section 138 was to stop dishonest persons from issuing cheques. The Court, however, didn't consider mens rea as an important ingredient by creating strict liability and agreed that there necessarily need not be intention for dishonouring cheques. Therefore, if a person who is unaware of insufficient funds issues a cheque and it is dishonoured due to insufficient funds, the person will be held liable for the commencement of an offence if all other ingredients are satisfied.

The gravity of the offence under the Section 138 is not same as that for IPC. The court has cleared in **Kaushalya Devi Massand** v **Roopkishore Khore**, that offence under Section 138 is only given criminal overtones but can't be equated with the other offences which are defined under IPC. Therefore, it could be said that the offence under Section 138 is only a civil wrong just defined in the act as criminal one.



Dishonour of a Negotiable Instrument

A negotiable instrument is dishonoured when the payment on the duly presented instrument is refused. Negotiable instrument can be dishonoured in two ways: by non-acceptance or by non-payment. A cheque and a promissory note can only be dishonoured by non-payment, but a bill of exchange can be dishonoured either by non-acceptance or by non-payment.

1. Dishonour by non-acceptance (Section 91)

A bill of exchange can be dishonoured by non-acceptance in the following ways:

- If a bill is presented to the drawee for acceptance and he does not accept it within (1)48 hours from the time of presentment for acceptance. When there are several drawees even if one of them makes a default in acceptance, the bill is deemed to be dishonoured unless these several drawees are partners. Ordinarily when there are a number of drawees all of them must accept the same, but when the drawees are partners acceptance by one of them means acceptance by all.
- (2) When the drawee is a fictitious person or if he cannot be traced after reasonable search.
- (3) When the drawee is incompetent to contract, the bill is treated as dishonoured.
- When a bill is accepted with a qualified acceptance, the holder may treat the bill (4)of exchange having been dishonoured.
- When the drawee has either become insolvent or is dead. (5)
- When presentment for acceptance is excused and the bill is not accepted. Where (6) a drawee in case of need is named in a bill or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

2. Dishonour by non-payment (Section 92)

A bill after being accepted has to be presented for payment on the date of its maturity. If the acceptor fails to make payment when it is due, the bill is dishonoured by non-payment. In the case of a promissory note if the maker fails to make payment on the due date the note is dishonoured by non-payment. A cheque is dishonoured by non-payment as soon as a banker refuses to pay.

An instrument is also dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid (Sec 76).

Effect of Dishonour: When a negotiable instrument is dishonoured either by nonacceptance or by non-payment, the other parties thereto can be charged with liability.

Notice of Dishonour

- Notice of dishonour means formal communication of the fact of dishonour.
- Such a notice also serves the purpose of enabling the person so notified to protest himself against the prior parties.

Notice By Whom

- Notice of dishonour must be given by the holder or by some party to the instrument who remain liable thereon;
- Any party receiving the notice of dishonour must also transmit the same to all prior parties in order to make them liable to him.
- No suit can be filed against the prior party if he has not transmitted the fact of dishonour of instrument.



- One person can give the notice only.
- Duly authorised person can also give notice.

Notice to Whom

- Notice of dishonour must be given to all parties (other than the maker of note, acceptor of a bill or drawee of a cheque) to whom the holder seeks to make liable or other duly authorised agents.
- In case of death of a person, notice must be given to his legal representative and he has been declared insolvent to his Official Assignee.
- In case after dispatch of notice and before it receipt the person dies, it will be treated as if the notice has been served. (Not knowing the fact).

Mode of Giving Notice

- It may be oral or in writing. If it is in writing it must be sent by post
- It should be given in reasonable time.

What is Reasonable Time?

In determining what is reasonable time the consideration is to be given:

- 1. Nature of the instrument
- 2. The usual course of dealing with respect to similar instruments
- 3. Distance between the parties
- 4. While calculating public holidays shall be excluded.
- 5. In case a party received the notice of dishonour is to transmit the same to his prior parties, the transmission should be done in reasonable time.

When Notice of Dishonour is Unnecessary

- 1. Where the indorsee while signing in that capacity adds the words 'notice of dishonour waived'.
- 2. Where the drawer of a cheque countermanded payment.
- 3. Where the party charged could not suffer damage for want of notice such as bank account closed or in case of accommodation bill.
- 4. Where the party to whom the notice is to be given not traceable or the party who has to give notice is unable to give notice like death, accident or serious illness.
- 5. When the drawer also happens to be acceptor.
- In case the Promissory Note which is not negotiable 6.
- 7. When the party entitled to receive notice promise to pay unconditionally the amount as due after due date.

Consequences of not giving notice of dishonour

Any party to negotiable instrument (other than maker of a note, acceptor of a bill or drawer of cheque) is discharged from his obligation under the instrument unless circumstances are such where no notice is required to be sent.

Noting

As soon as a bill of exchange or a promissory note is dishonoured, the holder can after giving the parties due notice of dishonour, sue the parties liable thereon.



Section 99 provides a mode of authenticating the fact of the bill having been dishonoured. Such mode is by noting the instrument. **Noting is a minute recorded by a notary public on the dishonoured instrument or on a paper attached to such instrument.** When a bill is to be noted, the bill is taken to a notary public who represents it for acceptance or payment as the case may be and if the drawee or acceptor still refuses to accept or pay the bill, the bill is noted as stated above.

Noting should specify in the instrument:

- (a) the fact of dishonour,
- (b) the date of dishonour,
- (c) the reason for such dishonour, if any
- (d) the notary's charges,
- (e) a reference to the notary's register and
- (f) the notary's initials.

Noting should be made by the notary within a reasonable time after dishonour. Noting and protesting is not compulsory but foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn. Cheques do not require noting and protesting. Noting by itself has no legal effect. Still it has some advantages. If nothing is done within a reasonable time protest may be drawn later. Noting without protest is sufficient to allow a bill to be accepted for honour.

Section 100

Protest

Protest is a formal certificate of the notary public attesting the dishonour of the bill by non-acceptance or by non-payment. After noting, the next step for notary is to draw a certificate of protest, which is a formal declaration on the bill or a copy thereof. The chief advantage of protest is that the court on proof of the protest shall presume the fact of dishonour. Besides the protest for non-acceptance and for non-payment the holder may protest the bill for better security. When the acceptor of a bill becomes insolvent or suspends payment before the date of maturity, or when he absconds the holder may protest it in order to obtain better security for the amount due. For this purpose, the holder may employ a notary public to make the demand on the acceptor and if refused, protest may be made.

Notice of protest may be given to prior parties. When promissory notes and bills of exchange are required to be protested, notice of protest must be given instead of notice of dishonour. (Sec. 102) Inland bills may or may not be protested. But foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn (Sec. 104).

Where a bill is required to be protested under the Act within a specified time, it is sufficient if it is 'noted for protest' within such time. The formal protest may be given at any time after the noting (Sec. 104A)

Contents of protest Section 101 of the Act lays down the contents of a regular and perfect protest which are as follows:

- 1. The instrument itself or a literal transcript of the instrument; and of everything written or printed thereupon.
- 2. The name of the person for whom and against whom the instrument has been protested.



- 3. The fact of and reasons for dishonour i.e. a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public from the person concerned and he refused to give it or did not answer or that he could not be found.
- 4. The time and place of demand and dishonour.
- 5. The signature of the notary public.
- 6. In the case of acceptance for honour or payment for honour the person by whom or for whom such acceptance or payment was offered and effected.

Section 147

Offences to be Compoundable : Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be compoundable.

Section 143A - Interim Compensation

A new section 143 A inserted after Section 143 in NI Act, 1881. It empower the court to direct the drawer of Cheque to make payment (interim compensation) to the complainant. The interim compensation which shall not exceed 20 percent of the cheque amount can be ordered to be paid in cases where the accused does not plead guilty in a summary trial or summons case.

Interim Compensation shall be paid within 60 days from the date of order to make such payment, or within such further period not exceeding 30 days as may be directed by the court of sufficient cause being shown by the drawer of the Cheque.

The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.

Section 148 - Deposit in case of appeal

A new section 148 inserted in parent act which states, "if drawer convicted in cheque dishonor case files appeal against conviction under section 138, the Appellate court may order the appellant to deposit such sum which shall be a minimum of 20 percent of the fine or compensation awarded by trial court".

The such amount payable shall be in addition to any interim compensation paid by the appellant under section 143A.

Return of Compensation with Interest

If the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.





Exercise-7: Review Your Progress

1.	If an (A)					
	(B)	,				
	(C)					
	(D)	None of the above				
2.	Asp	er the Negotiable Instrume	ents Act 1882,	the term negotiable means		
	(A)	Money	(B)	Transferable		
	(C)	Can be passed	(D)	Bargaining		
<i>3</i> .	Which of the following is not the Negotiable Instruments					
	(A)	Currency Note	(B)	Promissory Note		
	(C)	Bill of Exchange	(D)	Cheques		
4.	In N	egotiable Instruments Ac	t, the Bill of Ex	change is covered under which section		
	(A)	Section 4	(B)	Section 5		
	(C)	Section 6	(D)	Section 13		
5.	In N	egotiable Instruments Ac	t, the Cheque is	s covered under which section		
	(A)	Section 4	(B)	Section 5		
	(C)	Section 6	(D)	Section 13		
6.	In Negotiable Instruments Act, the Negotiable Instruments which is transferable from one					
	part	y to another by means of de	livery or endo	rsement & delivery		
	(A)	Section 4	(B)	Section 5		
	(C)	Section 6	(D)	Section 13		
7.	The p	parties whichare involved	in the Promiss	sory notes are		
	(A)	The Maker	(B)	The Payee		
	(C)	Endorsee	(D)	All of the above		
8.	Promissory note, is prepared by					
	(A)	The Creditor	(B)	The Debtor		
	(C)	The Surety	(D)	The Seller		
9.	Whe	When the payment is to be made immediately by means of Bill of Exchange, such bill is called as				
	 (A)	Term Bill	(B)	Faster Bill		
	(A)			D 1 D 11		
	(A) (C)	Sight Bill	(D)	Ready Bill		
10.	(C)	Sight Bill payer of Billof Exchange is	, ,			



Answer

Exercise-1

- 1. (C)
- (B) 2.
- 3. (A)

Exercise-2

- 1. (C)
- 2. (D)

Exercise-3

- (A)
- 2. (A)
- 3. (D)
- (A) 4.
- (D) 5.
- 6. (D)
- 7. (D)
- 8. (D)
- 9. (D)
- (D) **10.**

Exercise-4

- (D) 1.
- 2. (B)
- 3. (D)
- 4. (D)
- **5.** (D)
- (D) 6.
- (D) 7.
- 8. (D)
- (C) 9.



Exercise-5

- 1. (D)
- 2. (A) It occurs when a party repudiates his liability under the contract before the time for performance is due to when a party by his own act disables himself from performing the contract.
- 3. (B)
- 4. (C)
- 5. (B) Section 23 of the Indian Contract Act, 1872 - What considerations and objects are lawful and what not The consideration or object of an agreement is lawful, unless. It is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement said to be unlawful. Every agreement of which the object or consideration is unlawful is void.
- 6. (A)
- 7. (D)
- 8. (B)
- 9. (C)

Exercise-6

- 1. (B)
- 2. (D)
- 3. (B)
- 4. (C)
- 5. (C)
- 6. (D)
- 7. (D)
- 8. (D)
- 9. (A)
- 10. (A)

Exercise-7

- 1. (C)
- 2. (B)
- Currency is a legal tender, guaranteed by the government to transfer value but 3. (A) the Negotiable Instruments have following characteristics.
 - 1. It is written document, signed and stamped by the marker/drawer.
 - 2. It has a specific payee to whom the value is transferable.
 - 3. Negotiable Instruments requires acceptance and endorsement.



- **4.** (B)
- **5.** (C)
- **6.** (D)
- 7. (A & B)

The person who promises to pay money through Promissory Note is called as the maker (payer/drawer) and the person to whom the money is to be received called as Payee/Drawee.

- 8. (B) The promissory note is prepared by the payer in the consideration to make payment of a specific amount to the seller. Hence Promissory note is prepared by the Debtor (payer/maker/drawer/buyer of goods).
- **9.** (C) When the payment is to be made immediately by means of Bill of Exchange, such bill is called as Sight Bill.
- 10. (A) Since the buyer has to make payment against the goods purchased, he will be the Payer. The Bill of Exchange is prepared by the seller to receive money against goods sold, which the Buyer needs to accept to make payment to the Seller, hence he also becomes the Acceptor.

Since 'B' has to make payment to 'S', he will be also the Drawee/Debtor.





📜 🔲 Key Points & Revision Summary 🛄 🗷

I. The Indian Contract Act, 1972: Contract I

- 1. The Act is neither retrospective nor exhaustive.
- 2. Essential elements of Contract:
 - Two Parties
 - Offer and acceptance
 - Intention to create a legal relationship
 - Consideration- (Quid Pro Quo)
 - *Competent parties*
 - Free consent
 - Lawfulobjector consideration
 - Not expressly declared void
 - Certainty of meaning
 - Possibility of performance
 - Agreements not declared void
 - Compliance of legal formalities
- 3. All Contracts are agreements, all agreements are not contracts
- 4. Classification of contracts/agreements:
 - On the basis of formation
 - Express
 - Implied
 - Quasi-contract
 - On the basis of Nature of consideration
 - Bilateral
 - Unilateral
 - *On the basis of Execution*
 - Executed
 - Executory
 - *On the basis of validity*
 - Validagreement
 - Voidagreement
 - Void contract
 - Voidablecontract
 - Illegalagreement
 - Unenforceablecontract
 - E- Contract (Online Contract)
 - Shrink-wrap agreements
 - Click-wrap agreements
 - Browse wrap agreement
 - Other Contracts
 - *Contract of Record*
 - Speciality Contract or Formal Contract
 - Statutory Contract



📜 🕮 Key Points & Revision Summary 🛄 🗷

- 5. Essential Elements of Standard form of Contract
 - Reasonable Notice of Terms and Conditions
 - Terms in Contractual Documents
 - No Fraud or Misrepresentation
 - Terms and Conditions must be Reasonable
 - Strict construction of exemption clause (Contra Proferentem)
 - No Fundamental Breach of Contract
- 6. Kinds of Offer/Proposal
 - Express Offer
 - Implied offer
 - Specific Offer
 - General Offer
 - Cross Offer
 - Counter offer
 - Standing or Open Offer
- 7. Rules regarding Acceptance
- 8. Communication of Acceptance & Offer and Revocation of Acceptance & Offer
- 9. Consideration to contract:
 - Rules regarding consideration
 - Types of Consideration: Executory, Executed, Past
 - Privity to contract (stranger to a contract)
- 10. Capacity of parties to the contract Incompetent Persons by Statute'
 - Minor
 - Unsoundness of Mind
 - *Imbecility*
 - Drunkenness
 - Old Age
 - Intoxicated Persons

Other Incompetent Persons by Statute'

- A convict
- Corporations
- 11. ELEMENTS VITIATING CONTRACT
 - Coercion Section 15
 - Undue Influence Section 16
 - Fraud Section 17
 - Misrepresentation Section 18
 - *Mistake Sections* 20 to 22



📜 🕮 Key Points & Revision Summary 🛄 🗷

12. Doctrine of Frustration

Grounds of Frustration:

- Destruction of Subject-Matter
- Unusual Change of Circumstances
- Non-Occurrence of Contemplated Event
- *Death or Incapacity of Party*
- Government or Legislative Intervention

No grounds of Frustration:

- Where merely performance has been delayed
- Mere commercial hardship (does not) amount to frustration
- Frustration applies to executory contract and not to executed contract
- Where the parties have in contemplation that there can be delay in the performance

Theories of Frustration:

- Theory of implied
- Just and reasonable solution
- Indian position

Effects of Frustration:

- Frustration should not be self-induced
- Automatic Operation of Frustration
- 13. *Performance of contract:*
- 14. Discharge of a contract:
 - *Discharge by performance*
 - Discharge of Contract by Substituted Agreement
 - Discharge by lapse of time
 - Discharge by operation of law
 - Discharge by Impossibility of Performance
 - Discharge by Accord and Satisfaction
 - Discharge by breach
- 15. Breach of Contract:
 - Actual breach
 - Anticipatory breach
- 16. Remedies for Breach of Contract
 - Suit for rescission of the contract
 - Suit for damages
 - Suit for quantum meruit
 - Suit for specific performance.
 - Suit for injunction
- 17. Damages:



📜 🔲 Key Points & Revision Summary 🛄 🗷

II. The Indian Contract Act, 1972- Contract II

- 18. Contract of Indemnity:
 - Modes of Contract of Indemnity
 - (a) Expressed
 - (b) Implied
 - Essential Elements of a Contract of Indemnity
 - (a) Contract
 - (b) Loss to One Party
 - (c) Indemnity by The Promisor
 - Rights of Indemnity Holder
 - (a) Right to Recover Damages
 - (b) Right to Recover Sums Paid
- 19. Contract of Guarantee:
 - Essentials and Legal Rules for A Valid Contract of Guarantee
 - Must have all The Essentials of a Valid Contract
 - Primary Liability of Some Person
 - The Contract must be Conditional
 - No Misrepresentation
 - Form of Contract
 - *Joining of Other Co-Sureties*
- 20. Kinds of Guarantee
- 21. Bailment
 - Essential of a Valid Contract of Bailment
 - Contract
 - Goods
 - Delivery
 - *Purpose of Delivery*
 - Return or Disposal of Goods
 - *Modes of Delivery*
 - Actual Delivery
 - SymbolicDelivery
 - *Constructive Delivery*
 - Classification of Bailment
 - Gratuitous Bailment
 - Non-Gratuitous Bailment
- 22. Pledge or Pawn
 - Essentials a ValidContract of Pledge
 - Contract
 - Goods
 - Delivery
 - *Purpose of Delivery*
 - Return of Goods



🖎 📖 Key Points & Revision Summary 🛄 🗷

- 23. Agency
 - Salient Features of Agency
 - *Modes of Creation of Agency*
 - Express Agreement
 - *Implied Agreement*
 - Agency by estoppel
 - Agency of Holding Out
 - Agency by Necessity
 - Agency by Operation of Law
 - Agency by Ratification
- 24. Essentials of ValidRatification
 - Full Knowledge
 - Whole Transaction
 - Act on Behalf of Another Person
 - By the Principal
 - Existence of Principal
 - Contractual Capacity
 - Lawful Acts
 - Acts within Principal's Power
 - Communication
 - Within Reasonable Time
- 25. Kinds of Agents
 - Based on Authority
 - Based on Nature of Work
- 26. Legal Relationship between the Principle and Sub-Agent and Agent

III. Sales of Goods Act, 1930

- 27. Essential elements of Valid Contract of Sales
- 28. Requisites for contract of sale
- 29. Difference Between Sale and Agreement to Sell
- *30. Types of Goods:*
 - Existing Goods
 - Specific Goods
 - Unascertained Goods
 - Ascertained Goods
 - Future Goods
 - Contingent Goods
- 31. Doctrine of Caveat Emptor
- 32. Unpaid Seller
- 33. Suits/Remedies for Breach of The Contract



🔌 🔲 Key Points & Revision Summary 🛄 🙇

IV. Negotiable instruments Act, 1881

- Presumptions as To Negotiable Instrument 34.
- Classification of Negotiable Instruments 35.
- Kinds of Negotiable instruments 36.
- 37. Negotiation
- 38. Endorsement
- 39. Assignment
- 40. Offence under Section 138
- 41. Dishonour of a Negotiable Instrument and its provisions
- 42. Noting
- 43. Protest
- Recent Amendments 44.

